



New South Wales

# Coal Industry Act 2001 No 107

## Status information

### Currency of version

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### Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes.

### Does not include amendments by:

Work Health and Safety (Mines) Act 2013 No 54 (not commenced)  
Civil and Administrative Legislation (Repeal and Amendment) Act 2013 No 95 (not commenced — to commence on 1.1.2014)



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## Coal Industry Act 2001 No 107

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An Act to provide for the dissolution of the Joint Coal Board and the Mines Rescue Board; to provide for the exercise of the functions of those dissolved bodies by one or more companies registered under the *Corporations Act 2001* of the Commonwealth and approved by the Minister; to repeal the *Mines Rescue Act 1994* and amend the *Coal Industry Act 1946*; to make consequential amendments to other Acts; and for other purposes.

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Coal Industry Act 2001*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

**approved company** means a company approved under section 9.

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Brigade** means the Mines Rescue Brigade established by this Act.

**CFMEU** means the Construction Forestry Mining and Energy Union registered under the *Workplace Relations Act 1996* of the Commonwealth or any body succeeding or replacing that body.

**coal** includes oil shale and kerosene shale, but does not include peat.

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth.

**dissolution date** means the date on which section 4 (1) of the *Coal Industry Repeal Act 2001* of the Commonwealth commences.

**emergency** means an emergency due to an actual or imminent occurrence (such as fire, explosion, accident or flooding) that has resulted in the death of, or injury to, a person or is endangering or is threatening to endanger the life or physical well-being of a person.

**exercise** a function includes perform a duty.

**former members of the JCB staff** means the members of staff of the Joint Coal Board immediately before the dissolution of that Board.

**former 1994 Act** means the *Mines Rescue Act 1994*.

**function** includes a power, authority or duty.

**inspector** means an employee of an approved company appointed as an inspector as referred to in section 25.

**Joint Coal Board** means the body corporate constituted in pursuance of the *Coal Industry Act 1946* and the *Coal Industry Act 1946* of the Commonwealth.

**liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

**mine** means any pit or other place where mining is carried on or which is being developed for mining to be carried on, and includes a quarry and a salt-pan (whether occurring naturally or created artificially) and also includes any place, located at or in the vicinity of the mine, where material extracted from the mine is processed.

**Minerals Council** means the New South Wales Minerals Council Limited (ACN 002 500 316).

**Mines Rescue Board** means the corporation constituted by the former 1994 Act.

**mines rescue company** means the company for the time being approved under section 9 to exercise the functions referred to in section 10 (1) (k) (that is, functions under Division 3 of Part 3 and Part 4).

**mining** means extracting material from land for the purpose of recovering coal or other minerals from the material or of rehabilitating land from which any such material has been extracted, and includes the following:

- (a) loading, conveying and unloading any such material,
- (b) operating a coal preparation plant,
- (c) quarrying.

**Ministerial Holding Corporation** means the corporation constituted under section 37B of the *State Owned Corporations Act 1989*.

**owner** of a mine means any person who is the immediate proprietor, lessee or occupier of the mine, and includes:

- (a) if the mine is being worked by a person who is a liquidator, provisional liquidator, administrator, controller or other person authorised by law to carry on the business of working the mine—that person, or
- (b) if the mine belongs to, or is held in trust for, the Crown or a statutory authority—the Crown or that statutory authority, or
- (c) if the mine is being worked by a contractor—that contractor,

but does not include a person who:

- (d) merely receives a royalty or rent from the mine, or
- (e) is merely the owner or lessee of the mine, subject to a lease, grant or licence to, or contract with, another person to work it, or
- (f) is merely the owner of the soil in the mine,

and who is not otherwise interested in the coal or other minerals in the mine.

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

**Tribunal** means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

**underground coal mine** means a coal mine in which persons are employed underground while the mine is being worked.

**workers compensation company** means the company for the time being approved under section 9 to exercise the functions referred to in section 10 (1) (m).

#### 4 Notes

Notes included in this Act do not form part of this Act.

## **Part 2 Dissolution of Joint Coal Board and Mines Rescue Board**

### **5 Dissolution of Joint Coal Board**

- (1) On the dissolution date, the Joint Coal Board is dissolved in so far as it is constituted pursuant to the *Coal Industry Act 1946*.
- (2) The Minister, by order published in the Gazette:
  - (a) is to name each former member of the JCB staff, and
  - (b) is to specify an approved company in relation to each former member of the JCB staff so named.
- (3) Such an order, whether made before or after the dissolution date, has, or is taken to have, effect on the dissolution date.
- (4) Schedule 1 has effect.

### **6 Transfer of assets, rights and liabilities of Joint Coal Board**

- (1) On the dissolution date, the assets, rights and liabilities of the Joint Coal Board are transferred to the Ministerial Holding Corporation.
- (2) However, any such asset that is a Commonwealth record (within the meaning of the *Archives Act 1983* of the Commonwealth) is excluded from the transfer unless the National Archives of Australia has given permission, under section 24 (2) (b) of that Act, for the transfer.
- (3) Schedule 2 applies to the transfer effected by this section.

### **7 Transfer of specified assets, rights and liabilities of Joint Coal Board**

- (1) The Minister may, by order in writing published in the Gazette, transfer any such assets, rights and liabilities of the Joint Coal Board:
  - (a) as were transferred to the Ministerial Holding Corporation under section 6 (1), and
  - (b) as are specified or referred to in the order, to an approved company.
- (2) Despite section 37B (5) and (6) of the *State Owned Corporations Act 1989*, the Ministerial Holding Corporation must not dispose of any asset, right or liability (being an asset, right or liability transferred to it by this Act) otherwise than in accordance with an order of the Minister under this section.
- (3) An order under this section takes effect on the date specified in the order.
- (4) Schedule 2 applies to a transfer under this section.

### **8 Dissolution of Mines Rescue Board**

- (1) The Mines Rescue Board is dissolved.
- (2) Schedules 3 and 4 have effect.



## Part 3 Approved companies

### Division 1 Approval of companies

#### 9 Minister may approve of one or more companies

- (1) The Minister may approve (either conditionally or unconditionally) of one or more companies registered under the Corporations Act for the purpose of exercising one or more of the functions set out in Division 2 or 3 of this Part and in Part 4 if the constitution of the company concerned contains:
  - (a) a statement of the company's objects that reflects the functions concerned, and
  - (b) provisions to the effect of those set out in Schedule 5.
- (2) The Minister may approve of a company for that purpose even though the company has a constitution containing additional provisions, so long as those provisions are not inconsistent with any provision of the constitution required by subsection (1).
- (3) However, the Minister must not:
  - (a) approve of any company unless the company:
    - (i) is wholly owned in equal shares by the CFMEU (or by a company wholly owned by the CFMEU) and the Minerals Council (or a wholly-owned subsidiary of the Minerals Council), or
    - (ii) is the wholly-owned subsidiary of another approved company, or
  - (b) approve of any one or more companies unless the statement of objects of at least one of the companies includes the object of establishing or administering (or establishing and administering), or providing administrative services in respect of, superannuation schemes for the benefit of mine workers (within the meaning of the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*), former mine workers and their dependants, or
  - (c) approve 2 or more companies to exercise the function specified in section 10 (1) (k) at the same time, or
  - (d) approve 2 or more companies to exercise the function specified in section 10 (1) (m) at the same time.
- (4) The Minister's approval is to be given by a notice that:
  - (a) is published in the Gazette, and
  - (b) specifies any conditions of the approval, and
  - (c) specifies the functions that the company is approved, under this Part, to exercise.
- (5) In addition to any other functions it has under its constitution, an approved company has the functions specified in its notice of approval.
- (6) The Minister is to act in accordance with such provisions of the constitution of an approved company as are set out in Schedule 5.

**Note.** The constitution of an approved company will require (among other things) the Minister to appoint the directors of the company.

### Division 2 Functions of approved companies

#### 10 General functions

- (1) An approved company must exercise such of the following functions as are specified in its notice of approval:

- (a) providing work health and rehabilitation services for workers engaged in the coal industry, including providing preventive medical services, monitoring workers' health and investigating related health matters,
  - (b) collecting, collating and disseminating accident and other statistics relating to the health and safety of workers engaged in the coal industry,
  - (c) collecting, collating and disseminating other statistics related to the coal industry,
  - (d) referring matters relating to the safety of workers engaged in the coal industry, as it thinks fit, to the Chief Inspector appointed under the *Coal Mine Health and Safety Act 2002* for consideration,
  - (e) reporting to the Minister as it thinks fit, or when requested by the Minister, on matters related to the health or welfare of workers engaged in the coal industry, or on any other matter arising out of its functions,
  - (f) publishing reports and information of public interest concerning or arising out of its functions,
  - (g) promoting the welfare of workers and former workers in the coal industry in the State, their dependants and communities in coal mining areas,
  - (h) monitoring, promoting and specifying adequate training standards relating to health and safety for workers engaged in the coal industry,
  - (i) approving training schemes required for a health and safety management system under the *Coal Mine Health and Safety Act 2002*,
  - (j) monitoring dust in coal mines,
  - (k) providing mines rescue and other services in accordance with Division 3 of this Part and Part 4,
  - (l) establishing or administering (or establishing and administering), or providing administrative services in respect of, superannuation schemes for the benefit of either or both of the following:
    - (i) mine workers (within the meaning of the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*), former mine workers and their dependants,
    - (ii) employees of the approved company, former employees and their dependants,
  - (m) establishing or administering (or establishing and administering), or providing, workers compensation insurance schemes in relation to workers engaged in the coal industry.
- (2) In addition, an approved company may do either or both of the following:
- (a) provide courses in the production and utilisation of coal under international development assistance programs sponsored or administered by the Commonwealth Government or approved by the Minister,
  - (b) undertake, or take part in, any other activities of benefit to the coal industry in New South Wales as determined by the directors of the company from time to time.

## 11 Ancillary functions

For the purpose of exercising its functions, an approved company may:

- (a) undertake or arrange for research, inquiries, investigations, surveys, tests and inspections, and

- (b) require the keeping and furnishing of statistics, returns and other information relating to matters concerning or arising out of the company's functions under this Act.

## 12 Powers relating to health of mine workers

- (1) If an approved company is of the opinion that the health of workers at a coal mine is endangered, or is likely to be endangered, by any conditions at the mine or methods in operation at the mine, the approved company may, by notice in writing, require the owner or manager of the mine to do or refrain from doing such things specified in the notice as are necessary to protect the health of the workers.
- (2) An owner or manager of a coal mine must not, without reasonable excuse, refuse or fail to comply with a requirement made under this section.  
Maximum penalty: 200 penalty units in the case of a corporation or 50 penalty units in the case of an individual.
- (3) However, the owner or manager concerned may apply to the Tribunal for a review of a decision of an approved company imposing a requirement under this section.
- (4) If such an application is made:
  - (a) proceedings against the applicant for an offence under this section may not be instituted, and
  - (b) any such pending proceedings are stayed, until the completion of the review process.
- (5) In this section, *approved company* means an approved company whose approval extends to the exercise of functions under this section.

## 13 Orders of approved company

- (1) An approved company may, with the approval of the Minister, make orders, not inconsistent with this Act or the regulations, for or with respect to the approved company's functions.
- (2) Without limiting subsection (1), an order under this section may make requirements of the kind specified in section 11 (b).
- (3) An approved company may, with the approval of the Minister, by order vary or revoke any order made under this section.
- (4) An order made under this section:
  - (a) must be published in the Gazette, and
  - (b) takes effect on the day it is so published (or, if a later day is specified in the order for that purpose, on the later day so specified).
- (5) Subsection (4) (b) does not prevent an order from specifying different days in relation to different portions of the order.
- (6) A person must not, without reasonable excuse, refuse or fail to comply with an order made under this section.  
Maximum penalty: 200 penalty units in the case of a corporation or 50 penalty units in the case of an individual.
- (7) However, a person who is required to comply with an order made under this section may apply to the Tribunal for a review of the decision of the approved company that gave rise to the order.
- (8) If such an application is made:

- (a) proceedings against the applicant for an offence under this section may not be instituted, and
- (b) any such pending proceedings are stayed, until the completion of the review process.

### **Division 3 Principal functions of mines rescue company**

#### **14 Principal mines rescue functions**

The mines rescue company has the following principal functions in connection with underground coal mines in the State:

- (a) making available rescue services and facilities to deal with emergencies in those mines and, in particular, ensuring that the Brigade has the capacity to deal with any such emergencies,
- (b) ensuring that adequate rescue equipment (such as breathing apparatus) is available to enable members of the Brigade to deal with emergencies in those mines,
- (c) training members of the Brigade in mine rescue procedures at those mines and, in particular, in the use of breathing apparatus,
- (d) establishing appropriate procedures and arrangements for ensuring the mobilisation of members of the Brigade and the supply of rescue equipment in response to emergencies in those mines,
- (e) ensuring that persons with an adequate knowledge of mine rescue work are available to provide technical advice to the owners of those mines if emergencies should arise in those mines.

#### **15 Ancillary function of mines rescue company**

The mines rescue company has, in connection with its principal functions, the ancillary function of acquiring or building, and maintaining or disposing of, mine rescue stations.

#### **16 Discretionary functions—rescue services for other mines**

The mines rescue company may (but is not obliged to) exercise the following additional functions in connection with mines (other than underground coal mines in the State):

- (a) providing rescue services and facilities at those mines, including rescue equipment (such as breathing apparatus),
- (b) providing training courses in connection with mine safety and emergency procedures at those mines (including, for example, fighting fires and rescuing mine workers and others who are trapped in those mines).

#### **17 Discretionary functions—non-rescue services for mines and others**

The mines rescue company may (but is not obliged to) exercise the following additional functions:

- (a) providing work health and safety services for employers of mine workers and others (not including rescue services but including, for example, training services or assistance in work underground or in confined spaces),
- (b) providing technical and advisory services to owners of mines and others (including, for example, calibrating and repairing methane gas detection instruments and maintaining and repairing breathing apparatus).

**18 Discretionary functions may be exercised anywhere**

The mines rescue company may exercise its discretionary functions under this Division (or any function ancillary to those functions) in the State or elsewhere, or both in the State and elsewhere.

**19 Owners of coal mines to make contributions to fund mines rescue functions**

- (1) Owners of coal mines are to pay contributions to the mines rescue company to defray the costs incurred by that company in exercising its functions under section 14.
- (2) The mines rescue company is to determine, in respect of each financial year of that company, the amount that an owner of a coal mine must pay, in respect of the coal mine, under this section.
- (3) The mines rescue company may make different determinations under this section in respect of different coal mines, having regard to such of the following matters as are applicable to the coal mine concerned:
  - (a) the quantity of coal produced from the mine during the period of 12 months preceding the financial year concerned,
  - (b) the average number of employees employed at the mine during that period,
  - (c) the cost incurred during that period in meeting the expense of having employees of the mines rescue company on stand-by in respect of the mine,
  - (d) the cost incurred during that period in training members of the Brigade to carry out mine rescue work at the mine,
  - (e) an amount, quantified by the mines rescue company, representing the risk of a mining accident occurring at the mine,
  - (f) the cost likely to be incurred in actually responding to a call to the mines rescue company to provide rescue services at the mine.
- (4) The mines rescue company may (but is not obliged to) allow the amount determined to be paid by instalments, either generally or in a particular case.
- (5) The regulations may replace a determination made under this section by prescribing an amount, in respect of a particular coal mine, different from the amount determined by the mines rescue company in respect of the coal mine.
- (6) Any such regulation is taken, for the purposes of this Act, to be a determination made under this section.
- (7) Nothing in this section affects the liability of any person to pay any fees charged under section 22 (2).

**20 Mines rescue company to serve notice of contribution payable on owner of coal mine**

- (1) The mines rescue company must, for each year, serve on each owner of a coal mine a notice specifying the following:
  - (a) the amount that the owner is required to pay under section 19,
  - (b) the method by which that amount has been determined,
  - (c) the date by which the amount must be paid (or, if the amount may be paid by instalments, the amount of each instalment and the date by which that instalment must be paid).
- (2) If a regulation replaces a determination (as referred to in section 19 (5)), the mines rescue company must serve on each owner of a coal mine a further notice under subsection (1) in respect of the replacement determination.

- (3) A notice required by this section is taken to have been served on the owner of a coal mine:
  - (a) if, in the case of an owner who is not a body corporate, it is delivered to the owner personally, or is sent by post to the owner's last address known to the mines rescue company, or
  - (b) if, in the case of an owner who is a body corporate, it is served in a manner authorised under the Corporations Act for service of documents on a body corporate.

#### **21 Money due to mines rescue company**

- (1) The mines rescue company may waive or refund the whole or any part of any contribution, interest or other money due or paid to the company in any particular case or in any class of cases.
- (2) Any contribution, interest or other money due to the mines rescue company may be recovered as a debt in a court of competent jurisdiction.

### **Division 4 General financial matters**

#### **22 No fees for certain services**

- (1) The mines rescue company must not charge fees for services provided by it in the exercise of the functions specified in section 14.
- (2) Despite subsection (1), the mines rescue company may charge fees for providing rescue services and facilities (including rescue equipment) to deal with an emergency in an underground coal mine in the State.
- (3) However, the mines rescue company is not to charge any fee in respect of the first 8 hours (or such longer period as the regulations may prescribe) during which it provides those services and facilities in relation to the emergency.
- (4) A reference in this section to the providing of facilities includes a reference to the use of those facilities.

**Note.** Section 14 sets out the principal functions of the mines rescue company. Except as provided by section 22 (2), the costs of exercising those functions are to be defrayed by the contributions, under section 19, of owners of coal mines.

#### **23 Approved companies not subject to certain State taxes**

- (1) An approved company, and a subsidiary of an approved company, is not liable to taxation under any law of the State (other than under the *Mine Safety (Cost Recovery) Act 2005*) except in so far as the approved company or the subsidiary establishes or administers (or establishes and administers), or provides administrative services in respect of, a superannuation scheme.
- (2) Subsection (1) does not apply to an approved company, or a subsidiary of an approved company, that engages in activities outside the coal industry (except in so far as those activities are necessary to enable it to exercise its functions in relation to the coal industry).
- (3) Subsection (2) does not apply to the mines rescue company in respect of the exercise of its functions under Division 3 of this Part or Part 4 in relation to mines other than coal mines.

#### **24 Workers compensation funds**

- (1) All premiums and other money received by the workers compensation company under any workers compensation insurance scheme established, administered or provided by that company, and any other money received by the company for the

purposes of the scheme (including, but not limited to, money received under subsection (2)), must be applied:

- (a) to pay any sum required to be paid by the company under any workers compensation scheme established, administered or provided by it, and
  - (b) to pay any expenses incurred in the management and administration of any such scheme, and
  - (b1) to pay, to the Minister administering the *District Court Act 1973*, such of the costs of operation of the District Court relating to a coal miner matter under section 105 of the *Workplace Injury Management and Workers Compensation Act 1998*, being costs incurred after 30 June 2005, as the Minister administering the *District Court Act 1973* and the Minister administering this Act agree are to be paid from those premiums and that money, and
  - (c) to pay for the provision of work health and rehabilitation services, and
  - (d) for such other purposes related to the coal industry, to the company's welfare functions or to workers formerly engaged in the coal industry as may be approved by the Minister.
- (2) If the workers compensation company is satisfied (from the results of an actuarial investigation or from other information) that there is an overall deficit in the funds to be applied for the purposes specified in subsection (1), the workers compensation company may, by notice in writing to each employer in the coal industry in the State, require the employer to pay to the company a contribution of such amount as the company may determine and specify in the notice.
- (3) The contribution is payable:
- (a) in respect of the financial year specified in the notice, and
  - (b) at such time as is so specified.

## **Division 5 Appointment and powers of inspectors**

### **25 Approved companies may appoint inspectors**

- (1) An approved company may, by notice in writing given to any of its employees or officers, appoint the employees or officers as inspectors for the purposes of undertaking inspections to assist the approved company in the exercise of its functions.
- (2) As soon as practicable after making its first appointment under this section, an approved company must provide the Minister with a list specifying the names of each of its employees so appointed. The company must also, as soon as practicable after the occurrence of any change that would affect the list, notify the Minister in writing of the change.

### **26 Powers of inspectors to carry out searches**

- (1) An inspector may enter, at any reasonable time, any premises for the purpose of making an inspection referred to in section 25 and may do any or all of the following:
  - (a) search the premises,
  - (b) take photographs, or make sketches, of the premises or any substance or thing at the premises,
  - (c) inspect any book, record or document kept at the premises,
  - (d) remove, or make copies of, any such book, record or document.
- (2) An inspector may not exercise any powers under this section in relation to premises unless the inspector has:

- (a) produced the inspector's notice of appointment as an inspector for inspection by the occupier of the premises, and
  - (b) informed the occupier of the purpose of the inspector's entry of the premises.
- (3) An inspector may not, under this section, enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (4) An inspector must use no more force than is reasonably necessary in effecting entry on to any premises.
- (5) If damage is caused to property by an inspector in exercising a power of entry under this section, reasonable compensation is payable by the approved company of which the inspector is an employee to the owner of the property, unless the damage resulted from, or was connected with, obstruction of the inspector.
- (6) In this section, *premises* includes buildings, land and mines.

#### **27 Power to require information**

- (1) An inspector who has entered premises for the purpose of making an inspection referred to in section 25 may, to the extent that it is reasonably necessary to ascertain whether orders or requirements of the approved company in the exercise of any of its functions under Division 2 or 3 of this Part or Part 4 have been complied with, require a person to answer any questions put by the inspector and to produce any books, records or documents required by the inspector.
- (2) An inspector is not entitled to make a requirement of a person under this section unless the inspector produces his or her notice of appointment as an inspector for inspection by the person.

#### **28 Retention of books, records and documents**

If an inspector removes a book, record or document from premises under this Division, or a person produces a book, record or document to an inspector in accordance with a requirement of an inspector under this Division:

- (a) the inspector may retain possession of the book, record or document for such period as is necessary and reasonable for the purpose of ascertaining whether any orders or requirements referred to in section 27 (1) have been complied with, and
- (b) during that period, the inspector must permit a person who would be entitled to inspect the book, record or document if it were not in the inspector's possession to inspect the book, record or document at all reasonable times.

#### **29 Exoneration from personal liability**

A matter or thing done or omitted to be done by an inspector acting under the direction of an approved company does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the inspector personally to any action, liability, claim or demand.

### **Division 6 Certain obligations of owners and managers of coal mines and employers in the coal industry in relation to approved companies**

#### **30 Contributions to be paid by due date**

- (1) The owner of a coal mine must pay any amount required by the notice served on the owner under section 20 on or before the date specified in that notice for payment of the amount concerned.



- (2) An employer in the coal industry in the State must pay any amount required by the notice served on the owner under section 24 (2) on or before the date specified in that notice for payment of the amount concerned.
- (3) If payment is not made on or before the relevant date, the owner or employer concerned must pay interest on the amount in respect of the period from that date until the date of payment at such rate, not exceeding 15 per cent per year, as the mines rescue company or the workers compensation company (as the case requires) determines from time to time for the purposes of this subsection.

### 31 Workers compensation

- (1) The workers compensation company has the power to require any employer in the coal industry in the State to effect with or through that company all workers compensation insurance in respect of the employer's employees in the industry.
- (2) An employer in the coal industry in the State must comply with any such requirement.
- (3) The following are specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
  - (a) any matter or thing done by the workers compensation company in imposing a requirement under this section,
  - (b) any agreement entered into by or with the workers compensation company for the purpose of effecting workers compensation insurance in accordance with a requirement made under this section,
  - (c) the conduct of the parties in entering into any such agreement,
  - (d) the conduct of the parties in performing any such agreement.
- (4) The maximum penalty that may be imposed for failure to comply with a requirement under this section is:
  - (a) in the case of a corporation—100 penalty units for the first day the contravention occurs and an additional 50 penalty units for each subsequent day on which the contravention continues, or
  - (b) in the case of an individual—50 penalty units for the first day the contravention occurs and an additional 25 penalty units for each subsequent day on which the contravention continues.
- (5) In this section:
  - (a) **agreement** includes a contract, arrangement or understanding, and
  - (b) a reference to the workers compensation company or an employer in the coal industry includes a reference to the officers and agents of, and other persons duly authorised by, the company or employer concerned.

### 32 Co-operation with inspectors

An owner or manager of a coal mine, or an agent or employee of such an owner or manager, must not, without reasonable excuse:

- (a) refuse to answer any question put to the person under section 27, or
- (b) knowingly make any false or misleading statement in answer to any such question, or
- (c) fail or refuse to produce any book, record or document required to be produced under section 27, or

- (d) delay, obstruct or hinder an inspector in the exercise of any functions conferred on the inspector under Division 5.

Maximum penalty: 100 penalty units in the case of a corporation or 30 penalty units in the case of an individual.

## **Part 4 New South Wales Mines Rescue Brigade**

### **Division 1 Establishment, functions and composition of Brigade**

#### **33 Establishment of Mines Rescue Brigade**

There is established by this Act the New South Wales Mines Rescue Brigade.

#### **34 Functions of Brigade**

The function of the Brigade is to provide, under the control and direction of the mines rescue company, a mine rescue service for responding to, and dealing with, emergencies arising at underground coal mines in New South Wales and at other mines.

#### **35 Composition of Brigade**

- (1) The Brigade comprises all persons for the time being appointed as members of the Brigade by the mines rescue company.
- (2) A member of the Brigade is, when acting as such a member, to be regarded as being employed by the mines rescue company.
- (3) However, subsection (2):
  - (a) does not apply for the purposes of any superannuation scheme established by the company for the benefit of its employees, and
  - (b) applies for the purposes of payment of salary or wages only while the member of the Brigade is engaged in mine rescue work (and not while undergoing training for mine rescue purposes).

### **Division 2 Determination of requirements for Brigade**

#### **36 Determination of mines rescue company with respect to mine rescue personnel, equipment and storage facilities**

- (1) The mines rescue company must, for each underground coal mine in New South Wales, determine:
  - (a) the number of persons employed at the mine whose services the owner of the mine must make available to the mines rescue company for mine rescue purposes, and
  - (b) the number of items, and the kinds, of breathing apparatus and other rescue equipment that the owner must provide at the mine for use by those persons, and
  - (c) the amount of area, and the kinds of facilities, that the owner must make available at the mine for the storage of that equipment when not in use, for training members of the Brigade and for use by those members during emergencies at the mine.
- (2) The mines rescue company may, from time to time, vary a determination made under this section.
- (3) For the purposes of this section, a determination is taken to be varied if it is revoked and replaced by another determination.

#### **37 Compliance with determination**

- (1) The mines rescue company must serve a determination or variation of a determination made under this Division on the owner of the underground coal mine concerned.

- (2) The owner of an underground coal mine on whom a determination or variation is served must not, without reasonable excuse, refuse or fail to comply with the determination, or the determination as varied, within 28 days after service (or within such further period as the mines rescue company allows).  
Maximum penalty: 200 penalty units in the case of a corporation or 50 penalty units in the case of an individual.
- (3) If a determination or variation requires the owner of an underground coal mine to make available the services of a specified number of persons employed at the mine, the owner must, within 14 days after the service of the determination or variation, provide the mines rescue company with a list that includes the names, addresses and any other particulars required by the mines rescue company of the persons selected for that purpose.
- (4) If the mines rescue company is not satisfied that the owner of an underground coal mine is complying with a determination, or a determination as varied, the mines rescue company may serve on the owner a further notice specifying what the owner has to do to comply with the mines rescue company's requirements.
- (5) The owner of a mine on whom such a further notice is served must not, without reasonable excuse, refuse or fail to comply with the notice within 28 days after service (or within such further period as the mines rescue company allows).  
Maximum penalty: 200 penalty units in the case of a corporation or 50 penalty units in the case of an individual.

### **38 Modification of owner's obligation to comply with determination**

- (1) The obligation imposed on the owner of an underground coal mine by section 37 (2) or (5) is modified to the extent that the mines rescue company:
  - (a) has refused to appoint as a member of the Brigade a person whose name is included in a list provided by the owner under section 37 (3), or
  - (b) has terminated the appointment of a member previously appointed from a list so provided.
- (2) That obligation is also subject to the willingness of the persons whose names are included in such a list to be appointed as members of the Brigade.

### **39 Right to apply for review of determination**

- (1) The owner of an underground coal mine on whom a determination, or a variation of a determination, made under section 36 is served may, if dissatisfied with the determination or variation, apply to the Tribunal for a review of the decision giving rise to the determination or variation.
- (2) If such an application is made:
  - (a) proceedings against the applicant for an offence under section 37 (2) or (5) may not be instituted, and
  - (b) any such pending proceedings are stayed, until the completion of the review process.

## **Division 3 Appointment and termination of appointment of members of Brigade**

### **40 Appointment of members of Brigade**

- (1) On being provided with a list in accordance with section 37 (3), the mines rescue company must either appoint or refuse to appoint as members of the Brigade the persons whose names are included in the list.

- (2) The mines rescue company may also appoint any other person as a member of the Brigade.
- (3) However, a person is not to be appointed as a member of the Brigade without his or her consent.

#### **41 Termination of appointment of members of Brigade**

- (1) The mines rescue company may terminate the appointment of a member of the Brigade at any time.
- (2) If the mines rescue company refuses to appoint, or terminates the appointment of, a person named in the list referred to in section 37 (3) as a member of the Brigade, it must, by notice in writing, inform the person and the owner of the underground coal mine concerned of the mines rescue company's decision and the reason why the person was not appointed or the person's appointment was terminated.
- (3) Within 14 days after being so informed, the owner of the underground coal mine concerned must provide the mines rescue company with a further list specifying the name, address and any other particulars required by the mines rescue company of another person employed by the owner to replace the person whose appointment was refused or terminated.
- (4) Subsection (3) applies as often as may be necessary to ensure that the owner makes available to the mines rescue company the services of the number of persons specified in the determination, or variation, served on the owner.
- (5) If the owner of the underground coal mine concerned does not comply with subsection (3) within the period of 14 days referred to in that subsection, the owner is taken not to have complied with the determination of the mines rescue company served on the owner under section 37, or the determination as varied.
- (6) For the purposes of subsection (3), the mines rescue company is taken to have terminated the appointment of a member of the Brigade (and to have informed the owner of the underground coal mine concerned of the termination in accordance with subsection (2)) on the date on which the member ceased to be employed at the mine.

#### **42 Arbitration of dispute concerning appointment and termination of appointment of members of Brigade**

- (1) The mines rescue company and the owner of the underground coal mine concerned are taken to have entered into an arbitration agreement to have arbitrated under the *Commercial Arbitration Act 2010* any dispute between the mines rescue company and the owner arising from a decision of the mines rescue company refusing to appoint, or terminating the appointment of, a member of the Brigade.
- (2) If any such dispute arises, that Act applies accordingly.

### **Division 4 Miscellaneous**

#### **43 Training of Brigade**

The mines rescue company is responsible for ensuring that members of the Brigade are adequately trained in:

- (a) the use of breathing apparatus and other mine safety equipment, and
- (b) mine safety procedures, and
- (c) the work involved in rescuing persons who may become trapped in a mine or who may otherwise need to be rescued from dangerous situations occurring at or in a mine, and

- (d) the procedures involved in sealing an underground coal mine and in reopening such a mine that has been sealed, and
- (e) such other matters as the mines rescue company considers necessary.

**44 Owner must allow Brigade member to attend training and emergencies**

The owner of a mine who employs a member of the Brigade must not, without reasonable excuse, refuse or fail to allow that member to attend:

- (a) any official training for members of the Brigade, or
- (b) an emergency to which the member is called to attend as such a member.

Maximum penalty: 200 penalty units in the case of a corporation or 50 penalty units in the case of an individual.

**45 Certain events occurring at a mine rescue station to be notified to the Chief Inspector**

- (1) The mines rescue company is responsible for ensuring compliance with this section.
- (2) If a reportable event occurs at a mine rescue station, the person in charge of the station must:
  - (a) immediately give oral notice of the event to the Chief Inspector appointed under the *Coal Mine Health and Safety Act 2002* and to the mines rescue company, and
  - (b) within the following 24 hours send a written notice to them setting out:
    - (i) the nature of the event, and
    - (ii) the number and names of any persons killed or injured as a consequence of the event.
- (3) The person in charge of a mine rescue station:
  - (a) must keep a record of all reportable events occurring at the station, and
  - (b) must make the record available for inspection by the mines rescue company, or by any person designated by the mines rescue company, whenever the mines rescue company or person requests production of the record.
- (4) An event is a **reportable event** at a mine rescue station:
  - (a) if it is an accident which causes the death of a member of the Brigade or a serious bodily injury to such a member, being an accident occurring while the member is acting as such a member and is working at or from the station, or
  - (b) if it involves the breakdown of mine rescue equipment (such as breathing apparatus) that is in use at the station or is otherwise used by the Brigade at the station.
- (5) In this section, **serious bodily injury** means:
  - (a) a fracture of the skull, jaw, spine, pelvis, arm, shoulder-blade, collar-bone, forearm, thigh, leg, knee-cap, ankle or ribs, or
  - (b) a dislocation of the shoulder, elbow, hip, knee or spine, or
  - (c) an amputation of the hand or foot or of a substantial part of the hand or foot, or
  - (d) the serious impairment or loss of sight of an eye, or
  - (e) an internal haemorrhage receiving hospital treatment, or
  - (f) burns receiving treatment from a registered medical practitioner, or
  - (g) an injury involving injection of hydraulic fluid, or
  - (h) asphyxia.

#### **46 Certificates and medallions**

- (1) When the mines rescue company is satisfied that a member of the Brigade has successfully completed a course of training in mine rescue work approved by the mines rescue company and is competent to take part in mine rescue work, the member is entitled to receive from the mines rescue company a certificate to that effect.
- (2) The mines rescue company must keep a register of certificates issued under this section.
- (3) The mines rescue company must not authorise a member of the Brigade to enter an irrespirable atmosphere in a mine when undertaking mine rescue work or mine rescue training unless the person:
  - (a) is wearing suitable breathing apparatus, and
  - (b) is the holder of a certificate issued under this section.
- (4) The mines rescue company may issue a medallion to any member of the Brigade who, in its opinion, has satisfactorily completed such period of service as such a member as the mines rescue company determines. Service as a member of a permanent rescue corps established under the *Mines Rescue Act 1925* or as a member of the New South Wales Mines Rescue Brigade established under the *Mines Rescue Act 1994* may be treated as service as a member of the Brigade for the purposes of this subsection.

## Part 5 Miscellaneous

### 47 Effect of certain other Acts

- (1) Nothing in this Act affects the operation of:
  - (a) the *State Emergency and Rescue Management Act 1989*, or
  - (b) the *State Emergency Service Act 1989*.
- (2) An approved company is, in the exercise of its functions, subject to those Acts.

### 48 Effect of certain challenges

Except as expressly provided in this Act, any legal challenge to an order or requirement made by or under this Act, or to a discretion exercised under this Act, does not operate:

- (a) to suspend any obligation to comply with any such order or requirement (unless the court otherwise orders), or
- (b) to prevent the institution of proceedings, or to stay any pending proceedings, for failure so to comply.

### 49 Authority to prosecute

- (1) Proceedings for an offence under this Act or the regulations may be instituted only by:
  - (a) the Minister, or
  - (b) the Director of Public Prosecutions.
- (2) If an inspector is of the opinion that an offence against this Act or the regulations has been committed, the inspector may compile a report on the alleged offence and forward it to the Director of Public Prosecutions.
- (3) The Director of Public Prosecutions must consider any report forwarded to the Director under this section and determine whether to institute proceedings in respect of the alleged offence to which the report relates.

### 50 Nature of proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

### 51 Status of approved companies

For avoidance of doubt:

- (a) an approved company:
  - (i) is not an instrumentality or agent of the Crown, and
  - (ii) cannot render the Crown liable for any debts, liabilities or obligations of the company, and
- (b) none of the following Acts applies to or in respect of an approved company:
  - (i) the *Independent Commission Against Corruption Act 1988*,
  - (ii) the *Ombudsman Act 1974*,
  - (iii) any other Act prescribed for the purposes of this paragraph.



**52 Crown not bound**

This Act does not bind the Crown (except in relation to such mines as are owned by the Crown or by an instrumentality or agent of the Crown).

**53 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) requiring an approved company to provide the Minister, within the prescribed time, with such information (including copies of documents) relating to the company's exercise of its functions as the regulation may specify,
  - (b) matters that are to be included in the annual operating plan of an approved company,
  - (c) modifying the functions conferred on inspectors under this Act (including withdrawing any of those functions from inspectors),
  - (d) regulating inspectors in the exercise of their functions,
  - (e) regulating or prohibiting acts or omissions, or acts or omissions of a kind, specified in the regulation in relation to one or more approved companies (or a class, or classes, of approved companies) so specified.
- (3) A regulation may create an offence punishable by a penalty not exceeding 30 penalty units.
- (4) Before a regulation is made for the purposes of subsection (2) (e), the Minister must certify to the Governor that the regulation is necessary to protect the rights or interests, or to ensure the equitable treatment, of a particular worker engaged in the coal industry or owner of a mine.
- (5) At least 21 days before a draft regulation under this section is presented to the Governor, the Minister must furnish a copy of the draft to the Board of Directors of each approved company that will be affected by the proposed regulation.

**54 Repeal**

The *Mines Rescue Act 1994* is repealed.

**55, 56 (Repealed)**

**57 Savings, transitional and other provisions**

Schedule 8 has effect.

**58 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Transfer of staff of Joint Coal Board

(Section 5 (4))

### Part 1 Transfer of staff

#### 1 Transfer of former members of the JCB staff to approved company

Each former member of the JCB staff is transferred to the approved company specified, in the order of the Minister referred to in section 5 (2), in relation to the former member of the JCB staff concerned, and that former member of the JCB staff is to be regarded for all purposes as having become an employee of the approved company concerned on the dissolution date.

#### 2 General saving of conditions of employment

A transferred employee is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the employee if the employee had not been transferred but had instead remained on the staff of the Joint Coal Board (and that Board had continued in existence).

#### 3 Saving of leave

A transferred employee retains, as an employee of an approved company, any rights to annual leave, extended service leave, sick leave and other forms of leave, accrued or accruing in his or her employment with the Joint Coal Board (except accrued leave for which the employee has, on ceasing to be a member of the staff of the Joint Coal Board, been paid the monetary value in pursuance of any other entitlement of the employee).

#### 4 No dual benefit

- (1) This clause applies to a person who becomes, because of this Schedule, an employee of an approved company.
- (2) A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of the Joint Coal Board.
- (3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

### Part 2 Superannuation arrangements for transferred staff

#### 5 Interpretation

- (1) In this Part:

*EISS* means the electricity industry superannuation scheme.

*transferred employee* means a former member of the JCB staff who is transferred, under clause 1, to an approved company.

*transferred person* means a transferred employee who is transferred, under clause 6, to the EISS.

*Trust Deed* means the trust deed dated 30 June 1997 and entered into by the Treasurer and Energy Industries Superannuation Scheme Pty Ltd (ACN 077 947 285), as trustee, pursuant to section 127 of the *Superannuation Administration Act 1996*.

- (2) Expressions used in this Part have the same meaning as they have in the *Superannuation Administration Act 1996*, including section 128A.

## **6 Transfer of employees to EISS**

- (1) The Treasurer may, by order in writing, transfer a transferred employee from an FTC scheme or an STC scheme to the EISS.
- (2) The Treasurer is not to make such an order in respect of a particular transferred employee unless the employee concerned has, no later than 3 months after the dissolution date, elected, by notice in writing given to the Trustee of the EISS, to transfer to the EISS.

**Note.** Under the *Superannuation Act 1916* and the *State Authorities Superannuation Act 1987*, the benefits of transferred employees who were, immediately before being transferred, contributors to either of the schemes established under those Acts are preserved. The benefits may, at the employee's option, be "rolled over" into certain other schemes.

- (3) The Treasurer, FTC and STC are to take all necessary steps generally to facilitate the superannuation coverage of transferred persons by the EISS.
- (4) For that purpose, the Treasurer may enter into arrangements with the trustee of the EISS, including arrangements for the amendment of the Trust Deed.
- (5) Section 127 of the *Superannuation Administration Act 1996* does not limit or otherwise affect the operation of this clause and, in particular, does not prevent the transfer to the EISS of transferred persons or the superannuation coverage of transferred persons by the EISS.

## **7 Regulations**

- (1) Regulations may be made for or with respect to the transfer of transferred employees from an FTC scheme or an STC scheme to the EISS in accordance with a direction of the Treasurer under this Part.
- (2) In particular regulations may be made for or with respect to the following:
- (a) the transfer of assets and liabilities of an FTC scheme or an STC scheme, in respect of a transferred person, to the EISS,
  - (b) the transfer of assets and liabilities within an FTC scheme or STC scheme, or between any such schemes, from any reserve in respect of the employer or former employer of a transferred person to the Crown's reserve,
  - (c) the preservation or deferral of benefits of transferred persons,
  - (d) the entitlements, rights and obligations under the EISS of a transferred person,
  - (e) providing for the resolution, by a prescribed authority or person, of all or any prescribed class of disputes concerning the entitlements, rights and obligations of a transferred person under the EISS.
- (3) A regulation made under this Part has effect despite any provision of an Act under which an FTC scheme or an STC scheme is constituted.

## **8 Mobility between EISS and public sector schemes**

For the purposes of section 128A of the *Superannuation Administration Act 1996*, a transferred person is taken to be an employee referred to in section 128A (3) (a).

## Schedule 2 Transfer of assets, rights and liabilities of Joint Coal Board

(Sections 6 (3) and 7 (4))

### 1 Definition

In this Schedule, *instrument* means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

### 2 Application and interpretation

- (1) This Schedule applies to the following:
  - (a) the transfer of the assets, rights and liabilities from the Joint Coal Board to the Ministerial Holding Corporation under section 6 (1),
  - (b) the transfer of assets, rights and liabilities from the Ministerial Holding Corporation to an approved company by the operation of an order under section 7 (1).
- (2) In this Schedule, the body from which assets, rights or liabilities are so transferred is called the *transferor* and the body to which they are being so transferred is called the *transferee*.

### 3 Vesting of undertaking in transferee

When assets, rights or liabilities are transferred the following provisions have effect:

- (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
- (b) the rights and liabilities of the transferor become, by virtue of this clause, the rights and liabilities of the transferee,
- (c) all proceedings commenced before the transfer by or against the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations or other provisions under Schedule 8) to be read as, or as including, a reference to the transferee.

### 4 Operation of Schedule

- (1) The operation of this Schedule is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) No compensation is payable to any person in connection with a transfer effected by this Schedule.

**5 Duty**

Duty is not chargeable in respect of the transfer of assets, rights and liabilities to which this Schedule applies.

## **Schedule 3      Transfer of assets, rights and liabilities of Mines Rescue Board**

(Section 8 (2))

### **1      Definition**

In this Schedule, *instrument* means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

### **2      Transfer of assets, rights and liabilities of Mines Rescue Board**

- (1) The assets, rights and liabilities of the Mines Rescue Board are transferred to the mines rescue company.
- (2) On the transfer, the following provisions have effect:
  - (a) the assets of the Mines Rescue Board vest in the mines rescue company by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of the Mines Rescue Board become, by virtue of this clause, the rights and liabilities of the mines rescue company,
  - (c) all proceedings commenced before the transfer by or against the Mines Rescue Board and pending immediately before the transfer are taken to be proceedings pending by or against the mines rescue company,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the Mines Rescue Board is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the mines rescue company,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the Mines Rescue Board or a predecessor of that Board is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations or other provisions under Schedule 8) to be read as, or as including, a reference to the mines rescue company.

### **3      Operation of Schedule**

- (1) The operation of this Schedule is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the mines rescue company by a lessee from the Mines Rescue Board is required.
- (4) No compensation is payable to any person in connection with a transfer effected by this Schedule.

**4 Duty**

Duty is not chargeable in respect of the transfer of assets, rights and liabilities by operation of this Schedule.

## Schedule 4 Transfer of staff of Mines Rescue Board

(Section 8 (2))

### 1 Definitions

In this Schedule:

*former MRB staff* means the members of staff of the Mines Rescue Board immediately before the dissolution of that Board.

*transferred employee* means a former MRB staff member who is transferred, under clause 2, to the mines rescue company.

### 2 Transfer of former MRB staff to the mines rescue company

The former MRB staff are transferred to the mines rescue company and are to be regarded for all purposes as having become employees of that company on the commencement of this clause.

### 3 General saving of conditions of employment

A transferred employee is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the employee if the employee had not been transferred but had instead remained on the staff of the Mines Rescue Board (and that Board had continued in existence).

### 4 Saving of leave

A transferred employee retains, as an employee of the mines rescue company, any rights to annual leave, extended service leave, sick leave and other forms of leave, accrued or accruing in his or her employment with the Mines Rescue Board (except accrued leave for which the employee has, on ceasing to be a member of the staff of the Mines Rescue Board, been paid the money value in pursuance of any other entitlement of the employee).

### 5 No dual benefit

- (1) This clause applies to a person who becomes, because of this Schedule, an employee of the mines rescue company.
- (2) A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of the Mines Rescue Board.
- (3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.



## **Schedule 5 Provisions to be included in constitution of approved company**

(Section 9 (1))

Provisions to the effect of the following are to be included in the constitution of an approved company:

### **1 Entrenchment**

The constitution may not be altered or added to in a way that is inconsistent with Schedule 5 to the *Coal Industry Act 2001* unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

### **2 Act to prevail**

- (1) The provisions of the *Coal Industry Act 2001* prevail over any inconsistent provision of the constitution.
- (2) A reference in the constitution to **the Minister** is a reference to the Minister administering the *Coal Industry Act 2001*.

### **3 Replaceable rules**

- (1) Subject to subclause (3), the constitution operates to displace any replaceable rule applying to the company that is inconsistent with the *Coal Industry Act 2001*.
- (2) However, the constitution may be modified so as to re-apply any such displaced replaceable rule if resolutions approving the re-application of the rule have been passed:
  - (a) by the company, and
  - (b) by both Houses of Parliament.
- (3) Despite any provision of the *Coal Industry Act 2001*, the constitution does not operate to displace the replaceable rule contained in section 201K (Alternate directors) of the Corporations Act.

### **4 Operating plan**

- (1) On or before 31 May in each year, the company is to submit a draft annual operating plan in respect of the year commencing on 1 July of that year to the Minister.
- (2) The draft plan is to contain:
  - (a) a plan relating to the proposed strategy of the company in exercising its functions in the period to which the plan relates, and
  - (b) such other matters as may be required to be included in the plan by regulations made under the *Coal Industry Act 2001*.
- (3) The company:
  - (a) is to note any comments on the draft plan that are made by the Minister and communicated to the company within 21 days after the plan was submitted to the Minister, and
  - (b) is to consider whether, in view of any such comments, the plan should be amended before being adopted by the company, and
  - (c) is to deliver a copy of the adopted plan to the Minister before the commencement of the financial year to which it relates.

- (4) If the company proposes to amend an adopted annual operating plan, a copy of the plan as proposed to be amended is to be given to the Minister. Subclause (3) applies to such a plan as if the plan were a draft annual operating plan.

## **5 Directors**

- (1) The company is to have 7 directors.
- (2) The directors are to be persons appointed by the Minister.
- (3) Of the 7 directors:
- (a) 2 are to be appointed from among persons nominated by the CFMEU, and
  - (b) 2 are to be appointed from among persons nominated by the Minerals Council, and
  - (c) 2 are to be appointed from among persons who have relevant expertise and are nominated jointly by the CFMEU and the Minerals Council, and
  - (d) one (who is to be the managing director and Chief Executive Officer of the company) is to be appointed from among persons nominated (subject to subclause (6)) by the other directors.
- (4) However, the Minister may appoint, from among persons nominated (subject to subclause (6)) by the other directors, a person to be the Acting Managing Director and Chief Executive Officer of the company for a period commencing on the dissolution date and expiring on:
- (a) the date that is 6 months after the dissolution date, or
  - (b) the date of the appointment of the managing director and Chief Executive Officer under subclause (3) (d),
- whichever is the earlier.
- (5) If the CFMEU and the Minerals Council are unable to agree on the nomination required under subclause (3) (c), this clause is to be construed (for so long as those bodies are unable to agree) as if it referred (in subclauses (1) and (3)) to 5 directors, rather than 7 directors.
- (6) If the directors are unable to agree on the nomination required under subclause (3) (d) or a nomination allowed under subclause (4), the Minister may appoint a further director for the purpose of enabling the relevant nomination to be made by a majority of the directors.

## **6 Full-time and part-time directors**

- (1) The director appointed under clause 5 (3) (d) is to be appointed as a full-time director.
- (2) The other directors are to be appointed as part-time directors, except that:
- (a) one director appointed under clause 5 (3) (a), or
  - (b) one director appointed under clause 5 (3) (b), or
  - (c) both a director appointed under clause 5 (3) (a) and a director appointed under clause 5 (3) (b),
- may (but need not) be appointed as a full-time director.

## **7 Term of appointment**

- (1) Subject to the Corporations Act and the constitution:
- (a) a director appointed under clause 5 (3) (a) is appointed for such period (not exceeding 5 years) as is specified by the CFMEU in its nomination under that paragraph, and

- (b) a director appointed under clause 5 (3) (b) is appointed for such period (not exceeding 5 years) as is specified by the Minerals Council in its nomination under that paragraph, and
  - (c) a director appointed under clause 5 (3) (c) or (d) is appointed for such period (of at least 1 year but not exceeding 5 years) as is specified in the director's instrument of appointment, and
  - (d) a director appointed under clause 5 (6) is appointed only for so long as is necessary (in each case) for the directors to agree on a nomination for the purposes of clause 5 (3) (d) or (4), as the case may require.
- (2) If a period of appointment is not specified in a nomination referred to in clause 5 (3) (a) or (b), the director concerned is appointed for such period (not exceeding 5 years) as is specified in the director's instrument of appointment.
  - (3) On the expiry of the period for which a director is appointed, the director is eligible (if otherwise qualified) for re-appointment.

#### **8 Withdrawal of nomination**

- (1) The CFMEU or the Minerals Council may notify the Minister that it withdraws a nomination made by it under clause 5 (3) (a) or (b).
- (2) Such a notification:
  - (a) may be given at any time, and
  - (b) must nominate another person (the *new nominee*) in place of the person whose nomination is withdrawn (the *prior nominee*).
- (3) If the prior nominee is a director, the Minister must, on receipt of the notification referred to in subclause (1):
  - (a) revoke the appointment of the prior nominee as director, and
  - (b) appoint the new nominee as a director for the balance of the period for which the prior nominee was appointed.
- (4) The prior nominee is removed from the office of director on the revocation of his or her appointment as such.
- (5) The new nominee has all the functions as director (including, if relevant, the function of Chairperson) that were functions of the prior nominee.

#### **9 Chairperson**

- (1) The Chairperson of Directors for the period of the first 2 years of the company's existence is to be a director selected by the Minister (subject to subclause (2)) from the directors appointed under clause 5 (3) (a) or (b).
- (2) If a director appointed under either of those paragraphs has been appointed as a full-time director, the Chairperson is to be that appointee (or selected from those appointees, as the case may be).
- (3) On the expiry of the first 2-year period of the company's existence, and on the expiry of each subsequent period of 2 years, the Minister is to select and appoint as Chairperson of Directors for the immediately following period of 2 years:
  - (a) if the immediately previous Chairperson was appointed under clause 5 (3) (b)—a director appointed under clause 5 (3) (a), or
  - (b) if the immediately previous Chairperson was appointed under clause 5 (3) (a)—a director appointed under clause 5 (3) (b).
- (4) If the Chairperson's period of appointment as a director is due to expire before the expiry of the period for which the director is appointed as Chairperson, the period for

which the director was appointed as a director is taken (subject to clause 8) to be extended until the expiry of the period for which the director is appointed as Chairperson.

**10 Financial arrangements**

- (1) If the company exercises both:
  - (a) functions exercised by the Joint Coal Board (being the body corporate constituted in pursuance of the *Coal Industry Act 1946*) before the dissolution of that Board, and
  - (b) functions exercised by the Mines Rescue Board (being the corporation constituted by the *Mines Rescue Act 1994*) before the dissolution of that Board,separate funds are to be maintained in respect of those functions.
- (2) Each of those funds is to be credited and debited only in connection with the functions to which it relates.

**Schedules 6, 7 (Repealed)**

## Schedule 8 Savings, transitional and other provisions

(Section 57)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act  
*Coal Industry Amendment (Fees for Rescue Services) Act 2002*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

#### 1A Validation relating to commencement of Act

- (1) To avoid doubt, past acts are as valid, and are taken always to have been as valid, as they would have been if the *Coal Industry Repeal Act 2001* of the Commonwealth had commenced on 1 January 2002.
- (2) Subclause (1) is enacted in accordance with the express intention of the Parliament of the Commonwealth (set out in section 6 (6) of the *Coal Industry Repeal (Validation of Proclamation) Act 2002* of the Commonwealth) that a law of New South Wales may make provision in terms of that subclause.
- (3) Subclause (1) has effect to the extent to which it is not in excess of the legislative power of the Parliament of New South Wales.
- (4) In this section:  
*past act* means an act or thing that was done on the assumption that the *Coal Industry Repeal Act 2001* of the Commonwealth had commenced on 1 January 2002.

### Part 2 Provisions consequent on the enactment of this Act

#### 2 Dissolution of Joint Coal Board

- (1) On the dissolution date, a person holding office as a member of the Joint Coal Board immediately before that date ceases to hold that office.
- (2) A person who ceases to hold office under subclause (1) is not entitled to any remuneration or compensation because of loss of that office.

#### 3 Joint Coal Board workers compensation schemes

Any workers compensation scheme established by the Joint Coal Board and in operation under section 27 of the *Coal Industry Act 1946* immediately before the repeal of that section is taken to have been established by the approved company nominated by the Minister for the purposes of this clause.

#### **4 Orders of Joint Coal Board**

- (1) Any order of the Joint Coal Board made and in force under section 29 of the *Coal Industry Act 1946* immediately before the repeal of that section is taken to have been made under section 13 of this Act by the approved company nominated by the Minister for the purposes of this clause and may be amended or revoked by that company.
- (2) A reference in any such order to the Joint Coal Board is taken to be a reference to the approved company so nominated.

#### **5 Dissolution of Mines Rescue Board**

- (1) On the commencement of section 8, a person holding office as a member of the Mines Rescue Board immediately before that commencement ceases to hold that office.
- (2) A person who ceases to hold office under subclause (1) is not entitled to any remuneration or compensation because of loss of that office.

#### **6 Brigade is continuation of New South Wales Mines Rescue Brigade**

- (1) The Brigade is a continuation of the New South Wales Mines Rescue Brigade established by the former 1994 Act.
- (2) A person who was, immediately before the repeal of the former 1994 Act, a member of the New South Wales Mines Rescue Brigade is taken to be a member of the Brigade appointed under this Act and may be removed in accordance with this Act.

#### **7 Staff superannuation schemes**

Any staff superannuation scheme established by the Mines Rescue Board and in operation under the former 1994 Act immediately before the repeal of that Act is taken to have been established by the approved company nominated by the Minister for the purposes of this clause.

#### **8 Contributions of owners of coal mines**

- (1) A regulation in force under section 31 of the *Mines Rescue Act 1994* immediately before the repeal of that Act (being a regulation that prescribes the amount that the owner of a coal mine must pay to the Mines Rescue Board in respect of a particular financial year of the Board) is taken to be a determination of the mines rescue company under section 19 of this Act in respect of the financial year concerned.
- (2) However, an owner of a coal mine who has paid to the Mines Rescue Board the amount prescribed by such a regulation is not required to pay that amount to the mines rescue company.

#### **9 Construction of certain references**

- (1) A reference in any Act, in any instrument made under any Act or in any document of any kind, to:
  - (a) the Joint Coal Board, or
  - (b) the Mines Rescue Board,is taken (except as the regulations otherwise provide) to be a reference to the approved company exercising the relevant functions of the Board concerned.
- (2) A reference in any Act, in any instrument made under any Act or in any document of any kind, to the Mines Rescue Brigade is taken to be a reference to the Mines Rescue Brigade established by this Act.

## Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

## Table of amending instruments

Coal Industry Act 2001 No 107. Minister's second reading speech made: Legislative Assembly, 28.11.2001; Legislative Council, 11.12.2001. Assented to 14.12.2001. Date of commencement, 1.1.2002, sec 2 and GG No 199 of 28.12.2001, p 10826. This Act has been amended as follows:

- 2002** No 12 Coal Industry Amendment (Validation) Act 2002. Assented to 15.5.2002.  
Date of commencement, assent, sec 2.
- No 125 Coal Industry Amendment (Fees for Rescue Services) Act 2002.  
Assented to 16.12.2002.  
Date of commencement, assent, sec 2.
- No 129 Coal Mine Health and Safety Act 2002. Assented to 16.12.2002.  
Date of commencement of Sch 2.2, 23.12.2006, sec 2 and GG No 189 of 22.12.2006, p 11542.
- 2003** No 82 Statute Law (Miscellaneous Provisions) Act (No 2) 2003. Assented to 27.11.2003.  
Date of commencement of Sch 3, assent, sec 2 (1).
- 2005** No 64 Statute Law (Miscellaneous Provisions) Act 2005. Assented to 1.7.2005.  
Date of commencement of Sch 1.5, assent, sec 2 (2).
- No 116 Mine Safety (Cost Recovery) Act 2005. Assented to 7.12.2005.  
Date of commencement, assent, sec 2.
- 2007** No 94 Miscellaneous Acts (Local Court) Amendment Act 2007. Assented to 13.12.2007.  
Date of commencement of Schs 2 and 4, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009.
- 2010** No 61 Commercial Arbitration Act 2010. Assented to 28.6.2010.  
Date of commencement, 1.10.2010, sec 1B and 2010 (541) LW 24.9.2010.
- 2011** No 67 Work Health and Safety Legislation Amendment Act 2011. Assented to 28.11.2011.  
Date of commencement of Sch 4, 1.1.2012, sec 2 (1).

## Table of amendments

- Sec 10 Am 2002 No 129, Sch 2.2 [1] [2]; 2011 No 67, Sch 4.1 [1].
- Sec 17 Am 2011 No 67, Sch 4.1 [2].

Sec 19	Am 2002 No 125, Sch 1 [1].
Sec 22	Am 2002 No 125, Sch 1 [2].
Sec 22, note	Am 2002 No 125, Sch 1 [3].
Sec 23	Am 2005 No 116, sec 18.
Sec 24	Am 2005 No 64, Sch 1.5; 2011 No 67, Sch 4.1 [3].
Sec 42	Am 2010 No 61, Sch 2.6.
Sec 45	Am 2002 No 129, Sch 2.2 [3]–[5].
Sec 50	Am 2007 No 94, Schs 2, 4.
Secs 55, 56	Rep 2003 No 82, Sch 3.
Schs 6, 7	Rep 2003 No 82, Sch 3.
Sch 8	Am 2002 No 12, Sch 1; 2002 No 125, Sch 1 [4].